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DIGIMARC CORPORATION
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EXAMINER	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH L. LEVY, TONY F. RODRIGUEZ, and
R. STEPHEN HIATT

Appeal 2009-006303
Application 10/060,049
Technology Center 2400

Before THOMAS S. HAHN, CARL W. WHITEHEAD, JR., and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 20-28. Appeal Brief 3. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

Exemplary Claim

Exemplary independent claim 20 under appeal reads as follows:

20. An interactive television system for distributing content including an identifier, said system comprising:

a cable head end to receive the content, the content including an embedded digital watermark comprising an identifier, said cable head end comprising:

a digital watermark detector to extract the identifier from data representing picture or audio portions of the received content;

a bridge to communicate the extracted identifier to a database, the database including a trigger indexed according to the identifier, said bridge to receive a corresponding trigger identified in the database as corresponding to the identifier; and

an inserter communicating with said bridge to insert the trigger into the received content.

Rejection on Appeal

Claims 20-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,961,603 issued to Kunkel ("Kunkel") and U.S. Patent Number 5,822,432 issued to Moskowitz ("Moskowitz"). Answer 2-8.

Appellants' Contention

Appellants contend that Kunkel discloses MPEP [sic] tags that are "out-of-band" meaning that they are not carried through slight alterations to audio or video content as in the case with the claimed digital watermarking. Appeal Brief 5.

Issue on Appeal

Does Kunkel disclose "in-band" data as in the case with the digital watermarking recited in claim 20?

PRINCIPLE OF LAWS

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The Examiner can satisfy this test by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (*citing In re Kahn*, 441 F.3d at 988).

During examination of a patent application, a claim is given its broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted) (internal quotation marks omitted). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted).

ANALYSIS

We have reviewed the Examiner's rejection in light of the Appellants' arguments (Appeal Brief and Reply Brief) that the Examiner has erred. We disagree with the Appellants' conclusion. We concur with the conclusion reached by the Examiner.

Appellants argue that Kunkel discloses MPEP [sic] tags that are "out-of-band" meaning that they are not carried through slight alterations to audio or video content as in the case with the claimed digital watermarking. Appeal Brief 5. The Examiner responds by stating that Kunkel discloses inserting the ID tag in a (VBI) of the signal or by inserting in either the video or live video stream (in the case of analog signal and in the case of a digital signal) inserting the ID tag data periodically in a data stream associated with the particular video and audio data stream. Answer 8-9; Kunkel column 5, lines 36-43.

The Examiner relies upon Kunkel to disclose everything except for the embedded identifier being a watermark, but relies upon Moskowitz to disclose the use of a watermark as an embedded identifier. Answer 6.

Appellants further argue: (1) Kunkel teaches away from its combination with digital watermarking, Appeal Brief 6; (2) the Examiner employed impermissible hindsight, Appeal Brief 8; (3) the Examiner did not follow the established framework for applying the statutory language of §103, Reply Brief 4; (4) the Examiner's Answer failed to give each claim limitation its due weight, Reply Brief 5; (5) the Examiner's Answer suggests that impermissible hindsight was used, Reply Brief 6; and (6) an artisan would not read the Kunkel patent to extract from data representing picture or audio portion of the received content, Reply Brief 7-8.

From reviewing the record, we conclude that combining Kunkel's system for accessing information through a user's television with Moskowitz's teaching of a digital watermarking yields no more than the predictable result of having a system as claimed. *KSR Int'l Co. v. Teleflex Inc.,* 550 U.S. at 416-17. Despite Appellants' contentions to the contrary, we find that the Examiner has not relied on impermissible hindsight, but rather has provided a rational basis for supporting the obviousness conclusion. *See KSR,* 550 U.S. at 418.

Therefore, we will sustain the Examiner's rejection of independent claims 20 and 26.

We will also sustain the Examiner's rejection of dependent claims 21-25, 27, and 28 for the same reasons we stated above since the Appellants' arguments are based upon the combination of Kunkel and Moskowitz, which we have already addressed.

CONCLUSION

The Examiner has not erred in rejecting claims 20-28 as being unpatentable under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

rwk